



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/535,067

03/23/2000

Ronald O. Bubar

4645/31

1606

22859

7590

12/01/2006

INTELLECTUAL PROPERTY GROUP

FREDRIKSON & BYRON, P.A.

200 SOUTH SIXTH STREET

SUITE 4000

MINNEAPOLIS, MN 55402

EXAMINER

TRAN LIEN, THUY

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 12/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

8

Office Action Summary	Application No. 09/535,067	Applicant(s) BUBAR, RONALD O.	
	Examiner Lien T. Tran	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12,13,15-23 and 25-28 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12,13,15-23 and 25-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1761

The application was remanded from the board for consideration of an IDS filed on 7/2/04. Upon consideration of the IDS, it is found that the reference submitted is applicable to the claims. Thus, prosecution is hereby reopened.

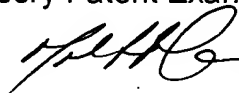
In view of the appeal brief filed on 7/14/05, PROSECUTION IS HEREBY REOPENED. The grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below.


MILTON I. CANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

Claims 12-13, 15-23, 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roy (EPA 0104743) in view of Paulucci (4842882).

Roy discloses a laminate pizza crust. The crust comprises multilayered of dough separated by layers of margarine. The dough is a proofed dough and comprises flour, water and vegetable oil. The laminated crust is formed by forming dough into sheet, extruding margarine layer on the sheet, rolling the dough, sheeting the rolled

Art Unit: 1761

dough, laminating the dough into a plurality of layers, cutting into pizza sections, baking the sections and adding toppings to make pizza product. The fat used is suitable to separate laminate layers of dough. Up to about 3-18 parts of margarine are used for each 90 parts of dough. (see pages 2,5,7 and 9)

Roy does not disclose docking the dough, the percentage of flour, margarine and water as in claims 16,20 and the property as in claim 28.

Paulucci discloses a laminated crust in which the dough is docked. Paulucci teaches it is known in the art to provide docking holes in crust dough. The holes are intended to assist in allowing gas and moisture to be released during the cooking process. (see col. 1 lines 30-35 and example 6)

Docking dough to allow steam and moisture to escape during cooking is notoriously well known in the art. Such teaching is exemplified in the Paulucci's disclosure. It would have been obvious to one skilled in the art at the time of the invention to dock the Roy dough for the purpose taught by Paulucci. As to the percentage of flour, margarine and water, the composition of dough product varies depending on the taste, flavor, texture, etc.. desired. It would have been obvious to one skilled in the art to vary the amount of flour, water and margarine taking into consideration these factors. Such determination is within the routine experimentation of one skilled in the art. It would also have been obvious to use margarine in the dough instead of oil because such substitution or exchange is well known in the art. The property claimed is inherent in the Roy product because it is a laminated crust separated by margarine layers as claimed. As to the difference in processing steps,

Art Unit: 1761

determination of patentability in product-by-process claims is based on the product itself.

Claims 12-13, 15-23, 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallin et al.

Wallin et al disclose a laminated crust comprising alternating substantially discrete layers of proofed dough and roll-in shortening. The dough comprises about 45-60% by weight flour, about 30-45% by weight water, .5-10% shortening and about 4-20% roll-in shortening. The laminated dough is docked. (see col. 7 lines 22-48, col. 11 lines 26-30 and 64-68, col. 10 lines 1-2)

Wallin et al do not disclose using margarine, having pizza topping on the laminated crust, pizza shape and baking the laminated dough.

It would have been obvious to one skilled in the art to use margarine instead of shortening because it is well known in the art to use shortening, butter or margarine alternatively. Butter and margarine are more expensive than shortening and give different taste and nutritional factor from shortening. It would have been obvious to one skilled in the art to select butter, margarine or shortening taking into consideration the above factors. As to applying pizza topping or forming a pizza, there is no identity standard to pizza because many types of topping are used to form pizza. For example, there are dessert pizza having fruit and cream. It would have been obvious to one skilled in the art to use a variety of filling to make different types of product. For example, it would have been obvious to use tomato and cheese filling if one wants to make a breakfast pizza. Such concept is well known in the art; for instance, there is

Art Unit: 1761

breakfast burrito, breakfast taco etc.. There is also pizza pocket which has the same structure as the one disclosed by Wallin et al. Thus, it would have been obvious to make the Wallin product in any shape desired depending on type of product wanted. While Wallin et al teach to fry the product, baking and frying are well known alternative cooking methods. Frying gives a better texture but has the drawn back of increasing the fat content. It would have been obvious to one skilled in the art to bake the product if one wants a healthier product having lower fat content. This alternative is known in the art; for example, there are potato chips that are fried and there are reduced-fat potato chip that are baked. The property claimed is inherent in the Wallin et al product because it is the same type of product as claimed. The Wallin et al product also differs from the claimed product in the way it is made. However, determination of patentability in product-by-process claims is based on the product itself.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday, Wednesday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

November 27, 2006

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1700